



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 12, 1997

Mr. John J. Ingram  
Staff Counsel  
Texas Department of Transportation  
Dewitt C. Greer State Highway Bldg.  
125 East 11th Street  
Austin, Texas 78701-2483

OR97-0530

Dear Mr. Ingram:

You seek reconsideration of Open Records Letter No. 96-2352 (1996), in which this office determined that the Texas Open Records Act, Government Code chapter 552, required the Texas Department of Transportation (the "department") to make certain information available to the requestor. We have assigned your request for reconsideration ID# 104433.

The department received a request for information regarding the decision to place a traffic control device at a particular intersection. The department argued that the requested information is excepted from disclosure under section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The department asserted that a federal statute, section 409 of title 23 of the United States Code, prohibits release of the requested information. Section 409 provides:

Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled for the purpose of identifying evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings, pursuant to sections 130, 144, and 152 of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds *shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data.* [Emphasis added.]

In support of its section 552.101 argument, the department stated that "[i]t would certainly seem a circumvention of that federal statute to allow compulsory production of that information by invoking the Texas Public Information Act." In response, this office ruled that "[t]he statute on which the department relies regulates discovery in court proceedings and not the availability of information under chapter 552 of the Government Code," and found that the information at issue could not be withheld under section 552.101. In so ruling, we stated that "chapter 552 of

the Government Code differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings," relying on Attorney General Opinion JM-1048 (1989), and Open Records Decision No. 575 (1990) (section 552.101 does not encompass discovery privileges). We also noted that section 552.006 of the Government Code provides that chapter 552 does not authorize withholding public information or limit availability of public information to the public except as expressly provided by chapter 552.

We have examined your request for reconsideration, with particular emphasis on the Tennessee cases of *Tony Seaton v. Carl Johnson, et al*, 898 S.W.2d 232 (Tenn.App. 1995), and *Henderson v. WSM, Inc.*, (unpublished) Slip op. (Tenn.App., Nov. 15, 1978) (no appeal taken) upon which you rely. We decline, however, to change the outcome of our original ruling. We affirm our ruling in Open Records Letter No. 96-2352 (1996), and thus the department may not withhold the requested information under section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID# 104433

cc: Mr. Larry Lawrence, Jr.  
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